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July 19, 2001

**FEDERAL EXPRESS**

Mr. Thomas M. Dorman  
Executive Director  
Public Service Commission of Kentucky  
Post Office Box 615  
Frankfort, Kentucky 40602

RECEIVED  
JUL 20 2001  
PUBLIC SERVICE  
COMMISSION

Re: Case No. 2001-104

Dear Mr. Dorman:

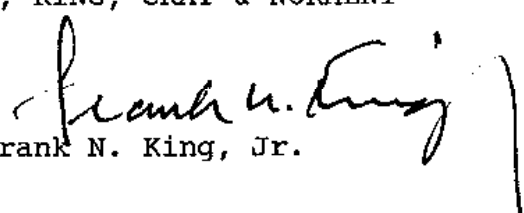
We enclose for filing the original and 10 copies of  
Brief of Intervenor Kenergy Corp.

Your assistance in this matter is appreciated.

Very truly yours,

DORSEY, KING, GRAY & NORMENT

By

  
Frank N. King, Jr.

FNKJr/cds

Encls.

Copy/w/encls.: Mr. Dean Stanley

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
JUL 20 2001  
PUBLIC SERVICE  
COMMISSION

In the matter of:

THE JOINT APPLICATION OF E.ON AG, )	CASE NO.
POWERGEN PLC, LG&E ENERGY CORP., )	
LOUISVILLE GAS AND ELECTRIC COMPANY, )	2001-104
AND KENTUCKY UTILITIES COMPANY FOR )	
APPROVAL OF AN ACQUISITION )	

BRIEF OF INTERVENOR KENERGY CORP

KENERGY CORP. ("Kenergy") does not object to the Commission's approval of the proposed acquisition, as outlined in the application. Kenergy does request that two (2) of the commitments be re-worded as set forth below, and that copies of the executed written acceptance be required to be served on all parties of record.

\* \* \* \* \*

Kenergy purchases wholesale power from LG&E Energy Marketing, Inc. ("LEM") for retail sale to its two (2) smelter customers, Century Aluminum Company ("Century"), formerly Southwire Company, and Alcan Aluminum Corporation ("Alcan"). Under the existing agreements service to Century expires December 31, 2010, and service to Alcan expires December 31, 2011.

LEM is an Oklahoma corporation and is a wholly owned subsidiary of LG&E Energy Corp. ("LG&E Energy"). LG&E Energy has

entered into guaranties with Kenergy unconditionally guaranteeing LEM's "due and punctual performance" of the wholesale service agreements. The foregoing service agreements and guaranties were approved by the Commission in Case Nos. 97-204, 98-267, 97-219 and/or 97-220.

In Case No. 2000-095 the Commission approved the acquisition of LG&E Energy by PowerGen PLC ("PowerGen"). In that case Kenergy sought assurance that the acquisition would not impair the wholesale service agreements or the guaranties. The Commission found that this was a valid concern and required LG&E Energy to commit (i) not to transfer the stock of its subsidiaries Louisville Gas & Electric Company ("LG&E") or Kentucky Utilities Company ("KU") without prior Commission approval, regardless of whether the transfer would be exempt under KRS 278.020(6)(b), and (ii) not to transfer any asset of LG&E or KU with an original book value in excess of \$10,000,000.00 without prior Commission approval. See pages 28 and 29 of May 15, 2000, order.

Under Appendix A to that order the approval of the merger was made subject to the written acceptance by PowerGen, LG&E Energy, LG&E and KU of certain commitments and assurances. The commitment regarding the prohibition against selling the common stock is set forth in paragraph 18 beginning on page 10 of Appendix A and the commitment regarding the prohibition against the asset

transfer is set forth in paragraph 8 on page 2. Additionally, on pages 8 and 9 of Appendix A the following commitments which pertain to Kenergy were required:

5. PowerGen and LG&E Energy commit that the acquisition of LG&E Energy shall have no effect or impact on various agreements associated with the resolution of Big Rivers Electric Corporation's bankruptcy proceeding. These agreements include, but are not limited to, the lease agreement and associated obligations between LG&E Energy's affiliates and Big Rivers Electric Corporation and the power purchase agreements between LG&E Energy Marketing, Kenergy Corp., Alcan Aluminum Corp., and Southwire Co. Any revisions to these agreements must be submitted for Commission approval prior to the effective date of the revision.

6. PowerGen and LG&E Energy commit that the acquisition of LG&E Energy shall have no effect upon the performance of LG&E Energy and its affiliates of their obligations under the Big Rivers Agreements. LG&E Energy and its affiliates shall continue to be bound by the terms of those agreements, including any guaranty agreements.

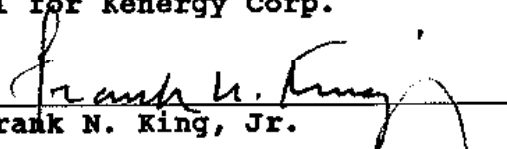
Assuming the Commission approves the application in this case, Kenergy requests that the approval be made subject to the written acceptance by E.ON AG ("E.ON"), as well as the other four (4) signatories of the same commitments and assurances set forth in Appendix A of the May 15, 2000, order in Case No. 2000-095. Kenergy points out to the Commission that in above paragraph 5, following "Southwire Co." should be added "now Century Aluminum Company." Further, in above paragraph 6 the wording "Big Rivers Agreements" is not defined. Presumably this includes Kenergy's

agreements, but in order to clarify, the wording should be changed to "Big Rivers and Kenergy agreements."

E.ON has made it abundantly clear that it will comply with the commitments ordered by the Commission in Case No. 2000-095. See filed testimony of Dr. Hans Michael Gaul, which was adopted by Dr. Erhard Schipporeit, page 21, lines 1 through 15, and filed testimony of Michael S. Beer, beginning on page 6 at line 19. Accordingly, Kenergy respectfully requests that the Commission require written acceptance of the Case No. 2000-095 commitments and assurances with the changes noted above, and that copies of the written acceptance be required to be served on all parties of record in this proceeding.

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By

  
Frank N. King, Jr.

The foregoing was served by mailing a true and correct copy, postage paid, upon the following, on this 19<sup>th</sup> day of July, 2001:

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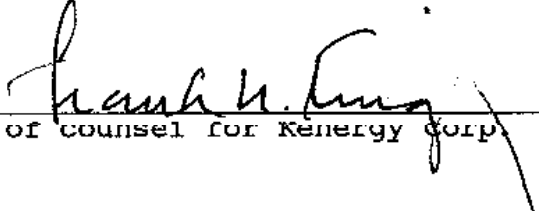
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